

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1165299 AND ALL
OTHER SEAMAN'S DOCUMENTS
Issued to: David K. JOHNSON, JR.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1819

David K. JOHNSON, JR.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 26 February 1969, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman's documents for two months plus four months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a an AB seaman on board SS ANDREW JACKSON under authority of the document above captioned, Appellant:

- (1) on 19 November 1968, failed to perform his assigned duties at Cam Rahn Bay, RVN;
- (2) on 4 December 1968, failed to perform duties, was absent from the vessel without leave, and wrongfully had intoxicating liquor in his possession at Cam Rahn Bay, RVN;
- (3) on 11 December 1968, was absent from the vessel without leave, failed to perform duties because of intoxication, and used foul and abusive language to the chief mate, Manila, R.P.;
- (4) on 12 December 1968, failed to perform duties at Manila, R.P.

At the hearing, Appellant did not appear. The Examiner entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of ANDREW JACKSON.

There was no defense.

At the end of the hearing, the Examiner rendered a written

decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of two months plus four months' probation.

The entire decision was served on 16 January 1970. Appeal was timely filed on 16 January 1970. Although Appellant had until 16 March 1970 to add to his original appeal, he has not done so.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an AB seaman on board SS ANDREW JACKSON and acting under authority of his document. On all dates in question, Appellant acted, or failed to act, as alleged in the specifications found proved.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that personal difficulties caused Appellant's drinking and attendant misconduct.

OPINION

I

Appellant's grounds for appeal are more a plea for clemency, than a statement of error in the record. Viewed even as an implied assertion that the Examiner's order is too severe, the appeal lacks merit.

The time and place for the urging of such matters were set in the notice of hearing. Since Appellant chose not to appear before the Examiner to present his plea, it is too late for him to do it now.

II

A comment must be made on the framing of two of the specifications in this case. The second specification alleged at least two separate, unrelated offenses: absence from the vessel without leave, and wrongful possession of intoxicants aboard the vessel. The third specification alleged three distinct and unrelated acts of misconduct:

- (1) absence from the vessel without leave;
- (2) failure to perform duties because of intoxication aboard the vessel; and

(3) use of foul and abusive language to an officer.

These specifications clearly violated the spirit of 46 CFR 137.05-17. The error in this case is not fatal, but in a contested case such inartful drawing of specifications could be productive of a great waste of time involving motions, amendment to specifications, withdrawal of specifications, and the preferring of new charges. Such delays and impediments can be avoided by initial correct draftsmanship.

ORDER

The order of the Examiner dated at San Francisco, California on 26 February 1969, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 9th day of Sept. 1970.

INDEX

Appeals

- Clemency sole ground, denied

- Defence not timely if presented first time on appeal

Charges and Specifications

- Errors in drafting to be avoided